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FILED
JUL 18 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-1343

Supreme Court of the United States

STEPHEN DIBBS,

Petitioner, pro se,

-against-

PAUL ROLDAN, Commissioner, New York State Division of Housing and Community Renewal, **(the "DHCR")**
JOHN MULHOLLAND, administrator, DHCR,
DENNIS RYAN, Commissioner,DHCR
BUILDING INSPECTORS of New York City Department of Housing Preservation and Development, (**"HPD"**)
JERILYN PERINE, Commissioner, HPD,
PATRICIA LANCASTER, Commissioner, New York City Department of Buildings ("DOB"),
KENNETH PODZIBA, Commissioner, New York City Board of Standards and Appeals ("BSA"),
TEN BE OR NOT TEN BE, INC., (landlord), TIM GREENFIELD-SANDERS (landlord), LAWRENCE PINNER (Landlord's architect),
JOAN LOBIS,CAROL HUFF, EILEEN BRANSTEN, New York State Supreme Court Judges,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeal for the Second Circuit

PETITION FOR REHEARING for WRIT OF CERTIORARI

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In 1993, the government broke into my apartment without a warrant, unnecessarily demolished a portion of it, seized my household and business property and left it in an illegal and dangerous condition, which continues today.

New York State and Federal judges obstruct tenant challenges to building code violations, and the outcome of my case was not an erroneous decision, but the result to a deliberate and intentional policy and practice to inhibit and censor the assertion of 4th and 5th Amendment rights of tenants.

Additionally, if a tenant's apartment is broken into by a landlord acting under a building code violation, any objections or 4th Amendment, warrantless, Search and Seizure claims will be Censored and extinguished.

As my case shows, although a remedy might be available in theory, it isn't available in practice.

New York City and State Administrative Agencies, and judicial review by State and Federal courts, have a Practice, Policy and long-standing Custom, of discrimination and excluding tenants from challenging the government power of Building Code Violation Correction.

The total absence of Lexis, national caselaw is tacit proof that New York, as well as the rest of the country, violates the 1st Amendment right to petition the government by a widespread, systemic custom and policy, of suppressing and extinguishing, Tenant's 4th Amendment, Search and Seizure claims, as well as denying them avenues to assert 5th Amendment, Regulatory Takings Claims.

As my case shows, New York State and Federal judges apply a toolbox full of unwritten laws,

unethical tactics, and ambush tactics, of unjust dismissals to avoid having to rule on the merits of the application of the 4th and 5th Amendments to tenants, and to delay the case past the statute of limitations and extinguish the tenant's assertion of constitutional rights.

New York's fairly recent, judicially created policy that a dismissal on statute of limitations, is "on the merits", is unconstitutional vague, and violates Due Process when there is ongoing illegality or when there is continuing danger or continuing oppressive conduct.

Not only is it a violation of the U.S. Constitution's Due Process Clause, but it is also rises to the level of CENSORSHIP of tenant's Search and Seizure claims.

Moreover, a careful examination of my case filings, starting from 1994, throughout all the orders granting leave to refile, shows that I used exacting diligence as to what the judges instructed, and that in fact, that I was never beyond the statute of limitations, and the judges in my case, falsified documents and the facts and outright lied, so that they wouldn't have to rule on the merits of these issues.

And the judges on the United States Supreme Court are to blame for turning tenants into citizens without constitutional rights, by refusing to adjudicate and stop these unconstitutional practices of the city and state housing agencies, who routinely abuse thousands of tenants every year. The U.S Supreme Court will litigate every aspect of corporate law, but when it comes to the health and safety of the public, they show their overpaid arrogance and their

immoral disposition. New York's Federal court, along with the U.S. Supreme Court's refusal to stop the terrible practices exemplified in my case, of the Housing agencies has sent a signal to all state judges and agencies below, that they can and should obstruct tenant's constitutional rights, which can only be accomplished by judicial lying, misrepresentation, omissions and unjust dismissals, which has now become a massive, concealed fraud upon the American public.

My storefront apartment was never legalized, and instead of punishing the landlord, HPD, the DHCR, and the State and Federal judges went out to punish the tenant instead by boarding up the windows and doors, turning off the heat, and creating and encouraging criminal activity in and around my premises so that I would get hurt. You made me live in filth and squalor, disenfranchised me from the laws, and dehumanized me.

Judge Sprizzo's order under appeal, officially reported in 356 F.Supp 2d 340 is so full of ommissions and misreprsentations, that it actually falsifies what my case is about. Not only does he bareface lies to me, but as a Nationally reported case, he bareface lies to all the American public, the entire legal community and to everyone who has or ever will have a case like mine. And he censors my futher lawsuits when there is a continuing illegality and dangerous conditions.

The judicial misconduct of Federal judges Leonard B. Sand and John Sprizzo, of obstructing and censoring my claims is sadistic and perverted behavior by judges, that through my lawsuit, the U.S. Supreme Court is now well aware of. Your denial of my Certiorari has given me a powerful political tool before

congress for [redacted] and to show how this court is part of a criminal enterprise , obstructing justice for millions of citizens.

And my case is important because it represents the thousands of similar tenants who previously filed serious complaints with the State "DHCR" housing maintenance agency, only to have all their Constitutional and state created property rights taken away.

My case is also important because Declaratory relief will protect the thousands of tenants in the future who are about to have their rights taken away because the city "HPD" housing violation agency does not provide hearings or process for tenants, and the state "DHCR", who assumes primary jurisdiction of these issues, and unreasonably delays and refuses an adequate Due Process adjudication, for administrative convenience, political reasons, or other reasons that the lower courts prevented me from determining as these courts have their own predetermined "constitutional avoidance doctrine", and steer these cases into procedural failure.

My case is important because New York state has prevented and will further prevent such cases from getting federal court review, much less the U.S. Supreme Court. Additionally, New York's housing code correction procedure is so vague, complicated and concealed (partially by the New York Department of state reporting service), that many lawyers and judges do not understand it, leaving a great gap where a lot of abuse goes on. This complication, and for too long, unsettled area of law, is mostly a tool to confuse and befuddle tenants, who are are not provided the

BEST AVAILABLE

appropriate process, and then thrown into a further confusing, overly complicated, yet starkly insufficient state judicial review. This court must correct this confusion and set basic standards of Due Process for city building code correction practices, as it affects tenants.

When the landlord rents the apartment, the property is transferred to the tenant and the landlord has no right to forcibly enter without a warrant, in the absence of an emergency. Having a minor building code violation from the city HPD housing agency is not a warrant and does not allow HPD, nor the landlord acting under the cloak of their authority, to forcibly enter, demolish and seize the rental property or the tenant's household belongings. Nowhere can it be found in the record, nor can the defendants point to any part of the prior proceedings where I could have gotten my seized household and business belongings returned to me.

If the DHCR State Housing agency assumes primary jurisdiction over these issues, rather than a court, they must provide timely and adequate due process, appropriate to the nature of an illegal and unconstitutional entry, trespass, demolition and seizure case - not unreasonably delay for 7 years, to force my case past the statute of limitations, for administrative convenience, political reasons or because they knowingly made mistakes of a constitutional magnitude that they're going to conceal. This goes equally for the state judges who were unwilling or unable to provide a meaningful hearing at a meaningful time, for a case based on warrantless entry and seizure of property, basing their

delay on "prematurity" because the State DHCR Housing agency didn't issue a final order for seven years and uses the petitions for administrative review as a tool to cause unjust dismissals.

BRIEF REVIEW OF FACTS

In 1984, New York Courts conferred the state created and constitutionally protected, property rights of residential status, holding that I was protected by Rent Stabilization Laws of 1969, and the Emergency Tenant Protection Act of 1974, even though my apartment was illegally converted from a store. My case was of special interest and was Officially reported in the New York Law Journal, 6/12/85, p.11, and was unanimously affirmed by a panel of conservative judges. see, 117 A.D.2d 1028.

In 1993, I wrote to the City HPD housing commissioner, complaining that his inspectors were not responding to my complaints that the landlord was supposed to provide mandatory heat.

I went on vacation for five weeks.

I returned from vacation to find that a full frontage security gate that acted as a boundary wall and entrance door to my apartment was removed, exposing 60 square feet of the interior of my apartment to the sidewalk. Homeless people were already living in the 60 square foot area. My tables, chairs and other household furnishing that I used for my daily living purposes (not being "stored" as the order under appeal, misrepresents) were seized, along with my business tools and supplies.

Suspecting my landlord, I went to the housing court to file a harassment lawsuit.

The Housing Court Clerk said that they don't do

harassment, and he directed me to file my case with the State "DHCR", housing maintenance agency.

I filed a Harassment complaint with DHCR.

I also filed a second, *separate and distinct*, **"Reduction in Services"** Complaint with DHCR.

The DHCR held an informal, "Conference", where the landlord said that he removed the gate because he was acting under the orders of a violation against it from the city "HPD" housing agency.

I was never given pre-deprivation Notice or a pre-deprivation opportunity to challenge the HPD building code violation, and now I was **"Trapped"** in the DHCR administrative complaint process.

The DHCR administrator issued an order stating that the removal of the gate created a dangerous nuisance.

The DHCR administrator told the landlord to restore the heat and replace the prior illegal, padlocking gate with a legal gate. see, NYC Admin Code, 27- ; RCNY §§ 25-151, subd, (b) thru (f); 25-221(b)

The DHCR sent their own inspector to my "Rent Stabilized apartment". The DHCR inspector issued "Grade 3, Hazardous violations" that the removal of the gate caused a security hazard, and to replace the prior illegal security gate, with a legal gate, within 30 days, or receive daily fines.

While I was waiting for the landlord to comply, the landlord instead had his architect make ex parte communications with the DHCR administrator, who made false allegations that a legal gate was impossible, to preempt having to submit the required plans for *permits* for the gate and heat restoration, with the New York City Department of Buildings, who

would find out that my apartment was an illegal conversion from commercial to residential, and fine the landlord further, but also make my apartment, safe and legal, which the landlord was obstructing.

The city, HPD housing agency who issued the violation against the prior illegal gate, had their policymaker, *DEPUTY* Chief inspector make ex parte contacts with the DHCR administrator, who said he didn't care that the courts said I couldn't be evicted, and that I was protected by Rent Stabilization and the Emergency Tenant Protection Act of 1974 (as reported in the New York Law Journal, 6/12/85, pg 11).

Policy maker, *Deputy*, Chief Inspector of city HPD said that he didn't care what the courts said, and that I couldn't be there, and he was going to obstruct any repair.

The policymaker, DHCR commissioner, newly appointed by the anti-rent stabilization governor, also ordered that he didn't want my apartment repaired, so the DHCR administrator, assigned to my case, falsely stated that I was denying access, when if fact, I was not denying access, and, when in fact the DHCR inspection report showed that, up until that time, all interior repair work was accomplished, and the only thing left to be done, was the restoration of the gate (which would have cured the HPD/landlord, *partial eviction* and dangerous trespass and nuisance of homeless and youth gangs and public urinators, living and utilizing that portion of my premises).

With the landlord's architect injecting ex parte, fraud into the proceedings and Policy makers, HPD, Deputy Chief inspector and the anti-rent stabilization DHCR commissioner, knowingly inhibiting the

assertion of my statutory and constitutional rights, coupled with my assertions that they were making illegal and dangerous alterations, without permits, the DHCR made a midstream reversal of their prior order and closed my case on false allegations that I was denying access and that further enforcement action was not necessary, leaving me with the heat still off, my windows and doors still boarded up, no ventilation, and the homeless living in a portion of my apartment.

On December, 14, 1994, I filed a timely state court special proceeding against DHCR, my landlord and his architect, who injected fraud and misrepresentation into the proceedings, and the New York City Department of Housing Preservation And Development, "HPD".

In New York, commencement by filing, Tolls the statute of limitations, and by raising my constitutional claims in the state "Article 78, summary proceedings" (which must be construed and litigated with 42 USC §1983 parity) I tolled the limitations period.

Further toiling attached when the Article 78 proceeding was dismissed as premature - *against all parties, including HPD and the landlord and architect* - conditioned on the DHCR issuing a final order (further tolling all claims, including my constitutional claims, by court order).

State appeals courts affirmed on prematurity.

After the state courts, refused a constitutionally adequate remedy, on March 23, 1998, I filed a 42 USCA Section 1983, in Federal District Court, docket, 98 Civ 2102, to compel an adequate Due Process remedy against the state court delay of

the adjudication of the break-in, seizure and demolition of my property.

About Six years after the break-in and demolition of my apartment, the DHCR issued an order, dated, June 2, 1999, granting me a $27 dollar a month rent reduction for the "loss of storage area" and **"Loss of private space"**.

Required by law, I filed a Petition for Administrative review, saying that the $27 was inadequate, but moreover, that I wanted the private space restored.

The Landlord also filed a DHCR, Petition for Administrative Review, saying that the $27 was a double award, because the "storage area and private space are, one and the same".

On March 23, 1999, Federal District Judge, Leonard B. Sand, issued an order, stating, "Plaintiff [Stephen Dibbs] appears to be bound in a loop whereby the DHCR will not issue a final order and New York's courts express an unwillingness to offer review without one." see, Appendix K, pg. 66.

The order goes on to state that claims against the landlord, HPD and the architect are time barred where as the claim for DHCR delay is not. Once the parallel Article 78 was commenced, judge Sand had no jurisdiction to be interfere with ongoing state administrative and court proceedings where the claims against HPD, the landlord and his architect were not time barred.

By Order, dated, December 14, 1999, judge Sand closed the Federal District court case, holding that I had no right to a hearing in DHCR, *discretionary* Harassment proceedings. [but this does not apply to the separate, and distinct facts of June, 1993, filing of

a "Reduction in Services" complaint, where the proceedings were still ongoing at the time of Sand's final order, and the process required for the *mandatory* maintenance of services, differs from discretionary harassment proceedings whereby the DHCR ***must*** ***maintain the same services and the same space.*** 9 NYCRR § 2520.6(r) ; 2523.4(a); NYC Admin Code, § 26-514; Pullman-Younger-Burford Abstention; Story v Cello; S.E.C. v Nat. _____

To my information and belief, the DHCR, hoping that further litigation would be precluded, issued their final order, dated, February 8, 2000, awarding me a $12 per month rent reduction for the loss of private space of my apartment.

Once again, in March, 2000, I forced to go forward with unnecessary, circuitous and overly burdensome litigation of having to file, serve and prosecute a second U.S. District Court, 42 USC § 1983, docket number, 00 Civ 2734, for relief that should have been provided in the State Article 78, in 1993. Two weeks later, Judge Sand, again assigned to my case, dismissed it - not on statute of limitation or res judicata, but directing me to pursue my state remedies through Article 78 proceedings.

By law, to collect rent, the landlord obtained a New York City Department of Buildings, "Work Permit", approving a gate, as New Evidence, attaching personal officer liability, that the DHCR and HPD policy makers were just obstructing my statutory and constitutional rights with malicious intent, and for which the State Article 78 proceedings does not have the power to award me damages for.

The State Article 78 proceedings concluded with judge Bransten stating, "...there is no indication

whatsoever that dibbs was entitled to exclusive use and enjoyment of the area between where the security gate existed and his apartment or that there was any taking of his property by the government...", which she now made a jury question as a disputed issue of fact , but moreover, it was the court impermissibly substituting their judgment for the State DHCR administrative agency, that was awarding a $12 rent reduction for the "Loss of Private Space".

Accordingly, this is not a Final Judgment on the merits that can attach preclusive effect under res judicata, collateral estoppel or 28 USC § 1738.

Moreover, the order states, " **This determination is without prejudice to commencement of an appropriate action against the landlord respondents.**" see, appendix U, pg 134.

Accordingly, this order relates back to and gives leave to commence a U.S. District Court, 42 USC § 1983 against the landlord acting under the cloak of government authority and compelled by the joint tortfeasor, New York City Department of Housing Preservation and Development "HPD".

IN CONCLUSION

As Camara v Muni Court of San Francisco and the more recent, Soldal v Cook County exemplify, that the lower court judges are unwilling to allow these issues to prevail, and that citizens who object to their apartments broken into cannot rely on being able to go to the United States Supreme Court every time it happens and as my case shows that the lower court judges maliciously and obstinately delayed and

obstructed my case.

My case should go forward, regardless of technical flaws - In The Interests Of Justice, and to protect the millions of residential tenants, because, the United States Supreme Court has never decided a case like this before and because the lower court judges, as a matter of unwritten policy over the Constitution, would destroy it and prevent it from ever reaching the court.

Additionally, my case should have been able to go forward in the District court on at least 8 grounds:

1. A Federal Judge, Leonard B. Sand, has already determined that this third federal District Court proceeding of mine, has jurisdiction to review if the joint and combined, DHCR administrative procedures comport with the minimum requirements of Due Process and whether the unreasonable 7 year delay raises to the level of a Due Process violation. see, Dibbs v Tornicasa, 1999 U.S. Dist. Lexis 3284, pages *12 - *19, cf. Dibbs v Tornicasa, docket 00 Civ. 2734, Order, dated April 14, 2000, directing Dibbs to seek Article 78 relief before filing this current District Court proceedings, now unnecessarily under this appeal. Appendix P, pg 105.

2. As a matter of constitutional Parity, state tolling and Equitable tolling, the first State court Article 78 can not refuse jurisdiction or a meaningful hearing at a meaningful time over Constitutional claims, by creating a 7 year court ordered delay, forcing the plaintiff past the statute of limitations and then blame the plaintiff.

3. New York DHCR proceedings did not provide me with the minimum Due Process requirements to

litigate an illegal and unconstitutional break-in and seizure of property. And the subsequent state judicial review, didn't provide a timely hearing, appropriate to the nature of the case. Since Article 78 proceedings can't provide the full measure of damages, they are not res judicata to a parallel Federal District Court, 42 USC Section 1983 action. Vargas v City of New York. Finkelstein v Capuano. And Collateral Estoppel cannot apply where the tenant was denied a full and fair opportunity to litigate with an "Evidentiary Hearing" in the abruptly terminated, non-judicial, DHCR administrative proceedings, and the subsequent state judicial review refused to correct these deficiencies with a prompt Trial, or a prompt jury trial, under CPLR 7804(h), or by providing discovery or the opportunity to present witness or further evidence to correct a deficient and inadequate, administrative record. My case provides ample proof that the State went on a deliberate and intentional course of action to delay and extinguish the assertion of my constitutional rights, and that judge Spizzo's use of the Rooker-Feldman doctrine was only intended to confuse and obfuscate my claims further. Sprizzo trys to limit me from filing any further lawsuits when the premises has still not been legalized, and he sadisticly and pervertedly tries to censor and obstruct any means to correct the dangerous conditions.

4. In the instant case, the ridged application of the "Fist in time decision" doctrine, overriding and extinguishing an inchoate "first filed", state Article 78 lawsuit, which was put on hold because of prematurity, violates the right to Due Process, as well as, Pullman-Younger-Burford Abstention, and moreover, the principles set forth in Davidson v

Capuano, Vargas, id, where unconverted, summary proceedings do not provide an adequate state remedy for constitutional violation, nor do they provide the full measure of relief.

5. New York's policy and legal fiction of a dismissal on statute of limitations is a dismissal "on the merits" is unconstitutional vague and violates due process when there is a ongoing illegality of illegally converted apartments, without certificates of occupancy, and illegal alterations by HPD and DHCR without permits, and a continuing state created dangerous Nuisance, with the intent to dehumanize and oppress citizens out of their homes for illegitimate reasons.

6. **NEW YORK HAS NEVER PROVIDED A CONSTITUTIONALLY ADEQUATE HEARING:** No administrative hearing ever held and Oral argument in court proceedings inadequate to determine fact intensive controversies, where credibility is in issue, experts and witnesses excluded, and ample need for discovery was denied.

New York has never provided an administrative, "evidentiary hearing" nor did they provide an adequate Post Deprivation, adversarial Hearing. The tenant doesn't know that he be denied an adequate state remedy, until he first tries, and is denied. The state's Refusal to Provide an "Adequate State Remedy", and it's narrow and limited review of only the DHCR for Arbitrary and capricious, is inadequate State Court Parity for 42 U.S.C. Section 1983 claims raised in State "Summary Proceedings" of CPLR, Article 78 proceedings, which the state judges refused to convert to an plenary action, or injection, or, declaratory action, and there by refusing

the minimum requirements of discovery, or the introduction of outside evidence to cure an incomplete, non-judicial administrative proceeding and record, or allow witness or cross examination of witness when there are hotly disputed questions of habitability, the extent and use of the premises, and the claims of false allegation and improper motivations of the Defendants.

7. Particularly under the specific facts of this case, Summary, Article 78 proceedings, historically procedurally, and as a matter of general New York practice, do not and did not provide a prompt, full and fair opportunity to litigate nor an adequate state remedy for res judicata, collateral estoppel, or 28 USCS §1737, Full Faith And Credit, purposes, to preclude a tenant's 5th Amendment claims of Impermissible Takings, Regulatory Takings claims, and what should have been a Temperory Taking against the joint, HPD/DHCR proceedings. see, First English Evan. Church; San Remo Hotel; Kramer v Chem Const Co.

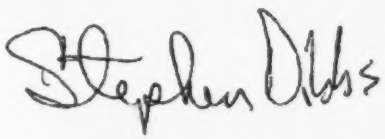
8. The Article 78 summary proceedings specificly stated that it did not litigate any claims against the landlord, or the landlord acting under HPD government authority of a warrantless break-in, and seizure of the tenant's property. Soldan v Cook Cnty. The court specifically gave leave to peruse these claims in the appropriate forum, stating, *" This determination is without prejudice to commencement of an appropriate action agaisnt the landlondlord Respondents...it does not appear that there has been any litigation of the merits with the landlord respondents "* see, Appendix U, pg 134. [now to be remanded to Hon. Sprizzo of the Federal District Court]. As the Federal

District court must apply the state tolling rules to this proceedings as well as there are no exceptions in Section 1983 actions to prevent the use of the , "Savings Statute", CPLR 205(a), the Federal District Court must apply the rules of amending which would permit adding Section 1983 claims to the facts that were originally stated.

Because the United Supreme Court refuses to evaluate whether the HPD and DHCR procedures comport with the minimum requirements of Due Process - that effect millions of citizens, just in NYC alone - for 1st, 4th, 5th and 14th Amendment infirmities, has signaled and encouraged all the judges and and administrative agencies below, into widespread fraud, omissions, misrepresentations in a systemic policy to suppress and obstruct tenant's constitutional rights.

Accordingly, the Plaintiff seeks a remand to the United States, Federal District Court, for the Southern District of New York, for a full and fair adjudication of the issues.

Dated, July 4 , 2008
New York, N.Y.



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CERTIFICATION

I, Stephen Dibbs, petitioner in the attached petition for rehearing, state that the petition for Rehearing is made in good faith and is not for delay but is for the purpose of demonstrating that the court misappies the Law of Rooker-Feldman, as exponded by Exxon Mobil v Saudi Basic, and refuses to allow my case to go forward under the line of cases relying on, Finkelstein v Capuano; Vargas v NYC, etc. where the state court proceedings were unable or unwilling to award the full measure of damages, but moreover, refused to provide the minimum requirements of due process, appropriate to the nature of a warrantless seizure and unreasonable state created delay and extinguishment of constitutional rights.

The defendants wanted to opress me and dehumanize me out out my aparment for their own political purposes.

My case can further continue under the principles set forth in the 5th Amendmends, Regulatory Takings claims, as the State Housing Agency didn't come to a final decision until February 8, 2000, and a prior Federal Lawsuit, ordered me to seek state remedies first.